HIGH COURT OF UTTARAKHAND AT NAINITAL

Delay Condonation Application No. 1310 of 2018

And

Special Leave to Appeal No. 92 of 2018

In

Criminal Appeal No. 208 of 2018

Gajendra Singh .....Appellant

Versus

State of Uttarakhand and others ….Respondents

Mr. Bhuwan Bhatt, Advocate for the appellant.
Mr. Siddharth Bisht, Brief Holder for the State.
Mr. Mohd. Azim, Advocate for the respondent no.2

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

The appellant has preferred an instant appeal against the judgment of acquittal recorded in favour of respondent no.2, in Complaint Case No. 200 of 2016, Gajendra Singh Vs. Neeraj Bhandari, passed by the learned 4th Additional Civil Judge (Junior Division)/ Judicial Magistrate, 1st Class, Dehradun (for short "the case").

2. Heard learned counsel for the parties through video conferencing.

3. The appeal has been filed with a delay of 366 days.

4. Delay Condonation Application No. 1310 of 2018 has been filed for condonation of delay in filing the appeal on the ground the lawyer could get the certified copy in the year 2018 and when the appellant contacted the lawyer in the High Court, he was told that appeal has been prepared. There is no delay on the part of the appellant. Learned counsel for the respondent no.2 has not seriously opposed the delay condonation application.

5. Having heard, this Court is of the view that reasons assigned for condonation of delay are sufficient. Delay condonation application is allowed. Delay in filing the appeal is condoned.

6. Appellant has also filed application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking leave to appeal.

7. Acquittal has been recorded mainly on the ground that before expiry of 15 days as given under Section 138 (c) of the Negotiable Instruments Act, 1881 (for short “the Act”) complaint was filed, which is not maintainable.

8. Learned counsel for the respondent no.2 would submit that a complaint can be filed only if the drawer of disputed cheque fails to make the payment of the amount involved therein to the holder in due course of the cheque within 15 days of the receipt of the said notice. In this case, before expiry of 15 day from receipt of notice, the complaint was filed.

9. In the instant case, admittedly, demand notice under Section 138 (b) of the Act was sent on 22.08.2013 and the complaint was filed on 05.09.2013. Though, it is disputed, as to when, the notice was received by the respondent no.2.

10. According to respondent no.2, the notice was returned after an endorsement having been made on it on 27.08.2013 that the respondent no.2 was not available at his house.

11. Without going into the controversy as to on which date, notice was deemed sufficiently served upon the respondent, if from the date of issuance of notice under Section 138 (b) of the Act, which is 22.08.2013, fifteen days is counted, 05.09.2013 is 14th day.

12. How to calculate the period is has been settled by the Hon'ble Supreme Court in the case of Econ Antri Limited Vs. Rom Industries Limited and another, (2014) 11 SCC 769 and after having discussed all the relevant laws on this point, in para 42 of it, Hon'ble Court laid down the law as hereunder:-

> "42. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh[1] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142 (b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA[2] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh[1] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly."

13. In view of the law laid down in the case of Econ Antri Limited *(supra)*, the day when cause of action arose has to be excluded for calculating the limitation.

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1. Saketh India Ltd. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329
2. SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567 : 1999 SCC (Cri) 600

14. In the instant case, if 22.08.2013 is excluded, 05.09.2013 is fourteenth day. The complaint in the instant case was filed on 05.09.2013. On that date, the cause of action has not arisen in view of Section 138 (c) of the Act.

15. Therefore, this Court sees no reason to permit the appellant to agitate the matter in the appeal. Hence, leave is declined and Special Leave to Appeal No. 92 of 2018 rejected.

16. The appeal is, accordingly disposed of.

17. The appellant is free to avail any other remedy as is permissible under the law.

(Ravindra Maithani, J.)
17.12.2020

Jitendra